



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

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Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/100,934 06/22/98 STOUT

W 9278

EXAMINER

WM01/0216

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INDIANAPOLIS IN 46204-5137

PARTIAL

ART UNIT

PAPER NUMBER

2171

DATE MAILED:

02/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
09/100,934Applicant(s)
StoutExaminer
Thuy PardoGroup Art Unit
2171

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires _____ months from the mailing date of the final rejection.
- b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Feb 6, 2001 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☐ The proposed amendment(s):
- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
 - ☐ will not be entered because:
 - ☐ they raise new issues that would require further consideration and/or search. (See note below).
 - ☐ they raise the issue of new matter. (See note below).
 - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

- ☐ Applicant's response has overcome the following rejection(s): _____

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The showing of diligence has not been met, and raises the issue of offers for use and sale (see attached).

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: _____

Claims objected to: _____

Claims rejected: 1-4

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Other

1. Applicant's Declaration and Response filed on February 06, 2001 in response to Examiner's Advisory Action has been reviewed.
2. The exhibit is, as stated in the Declaration, an act of contacting with several companies, organization, and government agencies but not a reduction of the complete invention to practice, and does not demonstrate diligence in that regard. The submitted Declaration is addressed to offer for use or sale, not to reduction of invention to practice.
3. The claim of diligence is not complete (see MPEP 2138.06), "An applicant must account for the entire period during which diligence is required. *Gould v. Shawlow*, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough); *In re Harry*, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not showing but a mere pleading)". In particular, the entire initial period must start prior March 08, 1996 and show diligence up to the part of reduction of the complete invention to practice, June 22, 1998. Dates must be established for items such as the effects of the surgery.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy Pardo, whose telephone number is (703) 305-1091. The examiner can normally be reached Monday through Thursday from 6:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black, can be reached at (703) 305-9707. The fax phone number for this Group is (703) 3085403.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

5. **Any response to this action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231


or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED
PROCEDURE")

Or:

(703) 308-5359, (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA.,
Sixth Floor (Receptionist).


Thuy Pardo
February 15, 2001


WAYNE AMSBURY
PRIMARY PATENT EXAMINER